

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, et al.,

v.

AMERICAN EXPRESS CO., et al.

Case No. 10-CV-04496-NGG-RER

IN RE AMERICAN EXPRESS ANTI-
STEERING RULES ANTITRUST
LITIGATION (II)

Master File No.: 11-MD-02221-NGG-RER

This Document Relates to:

ALL CASES

~~PROPOSED~~ **EXPERT DISCOVERY ORDER**

The following order shall govern expert discovery:

1. Plaintiffs in *U.S., et al. v. American Express*, Case No. 10-CV-04496-NGG-RER, shall be referred to as "Government Plaintiffs" and Plaintiffs in *In re American Express Anti-Steering Rules Antitrust Litigation (II)*, Master File No.: 11-MD-02221-NGG-RER ("MDL 2221") pursuing non-class claims shall be referred to as "Individual Merchant Plaintiffs." Plaintiffs in MDL 2221 pursuing putative class claims shall be referred to as "Class Plaintiffs."
2. The Individual Merchant Plaintiffs in MDL 2221 shall receive a copy of any expert report(s), attachments and other expert disclosures or productions submitted by Defendants or the Government Plaintiffs in *U.S., et al. v. American Express*. These materials shall be provided to the Individual Merchant Plaintiffs at the same time they are provided to parties in *U.S., et al. v. American Express*.
3. The Government Plaintiffs shall receive a copy of any expert report(s), attachments and other expert disclosures or productions submitted by Defendants or the Individual Merchant Plaintiffs in MDL 2221. These materials shall be provided to Government Plaintiffs at the same time they are provided to parties in MDL 2221.

4. The Class Plaintiffs in *MDL 2221* shall receive a copy of the opening expert report(s), attachments and other expert disclosures or productions submitted by the Individual Merchant Plaintiffs in *MDL 2221* and the opening expert report(s), attachments and other expert disclosures or productions submitted by the Government Plaintiffs in *U.S., et al. v. American Express*. The Class Plaintiffs shall not receive any expert reports submitted by Defendants, or any rebuttal or sur-rebuttal expert reports submitted by any party, in either *U.S., et al. v. American Express* or *MDL 2221*.
5. The parties shall produce all data, electronic models and spreadsheets relied on by the testifying expert, that have not otherwise been produced during discovery, in a manipulable, native format. The parties shall produce such data, models and spreadsheets in a manner that preserves their internal and external links. The parties shall also produce all code used in data manipulation relied on by the expert along with explicit references to data, models, and spreadsheets on which the expert relies.
6. To the extent that any intermediate and/or temporary datasets relied on as part of the testifying expert's analysis are readily reproducible by the other party by executing the provided code, the parties need not provide such datasets. To the extent that any aspects of the data manipulation and analysis processes are undertaken separate from or external to the provided code, the parties will provide sufficiently-detailed documentation for such processes so the processes are readily reproducible by the other party.
7. If the testifying expert has relied upon data that have already been produced in discovery, and has uploaded those data to SQL or a similar platform without modifying or manipulating the data in the upload process beyond the processes required for upload, the parties shall at the time the reports are served produce schema or instructions sufficient to document and reproduce the data upload rather than produce the uploaded data files themselves. For all data manipulation processes on such data subsequent to their upload on SQL or similar platform, the parties will produce all materials described above.
8. All materials required to be produced under paragraphs 5-7 must be produced so that they are received by physical delivery within 48 hours after the report is served.
9. The parties shall submit a joint proposed order, or competing proposed orders, governing procedures for expert depositions on June 7, 2013.

SO ORDERED.

Dated: 3/8/13
Brooklyn, New York



Ramon E. Reyes, Jr.
United States Magistrate Judge